IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1109 OF 2006
IN
CRIMINAL APPEAL NO.210 OF 2003

Sandeep Vasant Kunjir &
Manisha Sandeep Kunjir. ...Applicants.

Versus

The State of Maharashtra ...Respondent.

....
Mr.N.P.Deshpande, Advocate for the Applicants.
Mr.D.P.Adsule, APP, for State.
....

CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : 6th March, 2007.

P.C.:

1. Heard the learned Advocate for the Applicants and the learned APP for the State.

2. In the present case applicant No.1 has been convicted under Section 498-A of IPC on a complaint of applicant No.2. Applicant No.2 is the wife of applicant No.1. Being aggrieved by the said judgment and order of conviction the applicant has preferred Criminal Appeal No.210 of 2003. It is stated by the learned Advocate for

the applicant that during pendency of the Appeal before this Court, the parties have amicably settled the dispute amongst themselves and infact the parties have obtained divorce by mutual consent before the Family Court. There was settlement arrived at between applicant No.1 (husband) and applicant No.2 (wife) before the Family Court on 31st July, 2006. On 28th November, 2006 the parties had appeared before this Court and the learned Advocate for applicant No.2 stated that there was no objection if conviction and sentence of applicant No.1 is quashed and set-aside in view of mutual settlement between the parties.

3. Reliance was placed by the applicants on the decision of the Division Bench of this Court in the case of **Kiran Tulshiram Ingale Vs. Smt.Anupama P. Gaikwad & Ors., 2006(6) AIR Bom R 97**, wherein it is held that even in a case of conviction inherent powers can be exercised and criminal proceedings can be quashed even in cases under section 498-A.

4. The learned APP on the other hand has

placed reliance on a decision of the Supreme Court in the case of **Ramchandra Singh & Ors. Vs. State of Bihar and Anr., (2003) 10 SCC 234** wherein the appellants had been convicted under Section 498-A of IPC and there was a compromise between the parties. The learned APP has pointed out that in the said case the Supreme Court did not quash the proceedings and acquit the accused, but, it maintained the conviction and reduced the sentence of imprisonment to the period already undergone.

5. On perusal of the said decision it is noticed that there was no prayer in that case for quashing the proceedings. The appellant therein was convicted under Section 498-A IPC as the offence under section 498-A was not compoundable. In the said case the issue whether in case of compromise between the parties the prosecution can be quashed or not in a non-compoundable case did not come up for consideration before the Supreme Court. On going through the judgment, it is clear that the said question was not gone into by the Supreme Court. It is not the ratio of the judgment in the case of **Ramchandra Singh** (supra) that in case of compromise between the parties in

case of non-compoundable case, the prosecution cannot be quashed. It can be said to be the *ratio decidendi* of the judgment if the following requirements are met :

(a) The issue involved must be directly and substantially in issue in the case.

(b) The issue needs to be decided, and

(c) There are reasons given in the judgment while deciding the issue.

. If the judgment in the case of **Ramchandra Singh** (supra) is considered, it is seen that the said point was not in issue.

6. Whereas in the decision before the Division Bench of this Court in the case of **Kiran Ingale** (supra) the question directly come up for consideration and it was decided by the Division Bench. In the said case also, the husband was convicted under Section 498-A of IPC. In the said case also, the parties amicably settled the disputes and the complainant agreed not to press

for the conviction of the accused therein. The Division Bench held that in view of these facts, the criminal proceedings can be quashed irrespective of the fact that there was an order of conviction.

7. Looking to the decision of the Division Bench of this Court and the fact that the parties have amicably settled the dispute amongst themselves and in view of the statement made by the complainant, the criminal proceedings relating to conviction under Section 498-A are quashed. The accused is acquitted. His bail bonds stand cancelled.

8. Criminal Application is disposed of accordingly.

(SMT.V.K.TAHILRAMANI,J.)